

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review)	CC Docket No. 00-175
Separate Affiliate Requirements of Section)	
64.1903 of the Commission's Rules)	

NOTICE OF PROPOSED RULEMAKING

Adopted: September 13, 2001

Released: September 14, 2001

Comment Date: 30 Days after Federal Register Publication of this NPRM

Reply Comment Date: 21 Days after the Comment Date

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we institute a broad-based reexamination of Part 64, Subpart T of the Commission's rules,¹ which establishes safeguards for the provision of certain interexchange services by incumbent independent local exchange carriers (incumbent independent LECs). In particular, the current rules require that incumbent independent LECs use a separate corporate affiliate if they wish to provide in-region, interstate, interexchange service or in-region, international interexchange service (in-region, interexchange service), in whole or in part, on a facilities basis.² Incumbent independent LECs that provide in-region, interexchange service exclusively through resale may do so through a separate corporate division subject to certain safeguards discussed below.³ In this NPRM, we invite interested parties to comment on whether or not the benefits of the separate affiliate requirement for facilities-based providers continue to outweigh the costs and whether or not there are alternative safeguards that are as effective but impose fewer regulatory costs.

¹ 47 C.F.R. §§ 64.1901-03.

² Under section 64.1903(b) of the Commission's rules, the separate corporate affiliate "shall be a separate legal entity from its affiliated exchange companies." 47 C.F.R. § 64.1903(b).

³ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace and Leaco Rural Telephone Cooperative, Inc. Petition for Waiver*, CC Dockets Nos. 96-149 & 96-61, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999) (*Second Reconsideration Order*); 47 U.S.C. § 64.1903(b)(1).

II. BACKGROUND

2. In the *LEC Classification Order*, the Commission required that incumbent independent LECs providing in-region, interexchange service do so through a separate corporate affiliate that satisfies the separation requirements established in the *Competitive Carrier Fifth Report and Order*.⁴ Pursuant to that decision, the separate affiliate must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated local exchange telephone company; and (3) acquire any services from its affiliated local exchange telephone company at tariffed rates, terms, and conditions.⁵ In addition, the Commission's affiliate transaction rules apply to transactions between an incumbent independent LEC and its separate affiliate.⁶

3. In contrast, a Bell Operating Company (BOC) is permitted to provide interLATA services originating in an in-region state only if it demonstrates to the Commission that it has satisfied the market-opening requirements of section 271 of the Telecommunications Act of 1996⁷ and that it will provide these services through an affiliate that complies with the more stringent structural separation and nondiscrimination requirements in section 272.⁸ The Commission's affiliate transaction rules, however, also apply to transactions between a BOC and its section 272 separate affiliate.⁹

⁴ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149 & 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15841-64, paras. 144-192 (1997) (*LEC Classification Order*), Order on Reconsideration, 12 FCC Rcd 8730 (1997) (*LEC Classification Order on Reconsideration*), Order, 13 FCC Rcd 6427 (1998) (*LEC Classification Partial Stay Order*).

⁵ *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, 98 FCC 2d 1191, 1198, para. 9 (1984) (*Competitive Carrier Fifth Report and Order*). For purposes of the separate affiliate requirement, the Commission subsequently clarified that its "use of the term 'interexchange' in the *LEC Classification Order* does not refer to services between local telephone exchanges within the [incumbent] independent LEC's exchange area, but instead refers to services between a point located in an [incumbent] independent LEC's exchange area and a point located outside such area." *Second Reconsideration Order*, 14 FCC Rcd at 10794, para. 30.

⁶ See 47 C.F.R. § 32.27.

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the Act), codified at 47 U.S.C. §§ 151 *et seq.*; 47 U.S.C. §§ 271, 272.

⁸ For example, with respect to structural separation, under the Act, section 272 BOC separate affiliates are required to: (1) operate independently from the BOC; (2) maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate; (3) have separate officers, directors, and employees from the BOC of which it is an affiliate; (4) not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the BOC; and (5) conduct all transactions with the BOC of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection. See 47 U.S.C. § 272(b).

⁹ See 47 C.F.R. § 32.27.

4. The Commission specifically based the separate affiliate requirement adopted in the *LEC Classification Order* on the conclusion that the incumbent independent LECs' control of local exchange and exchange access facilities gave them the ability and incentive to engage in cost misallocation, unlawful discrimination, or a price squeeze against rival interexchange carriers.¹⁰ In reaching this conclusion, the Commission first determined that a relevant geographic market must be defined in order to conduct an accurate assessment of market power. Thus, in the *LEC Classification Order*, the Commission characterized the relevant geographic market for interstate, domestic long distance services as all possible routes that allow for a connection from one particular location to another location (*i.e.*, a point-to-point interexchange market).¹¹

5. In the *Second Reconsideration Order*, the Commission relaxed its requirement for the use of a separate affiliate and allowed incumbent independent LECs providing in-region, interexchange service exclusively on a resale basis to do so through a separate corporate division subject to certain safeguards.¹² The Commission concluded that incumbent independent LECs providing in-region, interexchange service exclusively through resale were less likely to be able to engage in anti-competitive behavior than similar LECs providing in-region, interexchange service using facilities that they owned.¹³ The Commission determined, however, that incumbent independent LECs reselling in-region, interexchange service still possessed some ability to engage in anti-competitive behavior.¹⁴ Accordingly, the Commission eliminated the requirement that such incumbent independent LECs provide in-region, interexchange service through a separate corporate affiliate, but required that these incumbent independent LECs continue to comply with the applicable *Competitive Carrier Fifth Report and Order* requirements set forth in section 64.1903(a) of the Commission's rules.¹⁵ Specifically, the Commission required that these carriers maintain separate books of account for the separate corporate division providing such interexchange services and comply with the affiliate transaction rules.¹⁶ The Commission also required that the interexchange services division take services from the parent corporation pursuant to tariff or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251 of the Act.¹⁷

¹⁰ *Second Reconsideration Order*, 14 FCC Rcd at 10772, 10784-85, paras. 2, 17.

¹¹ *See LEC Classification Order*, 12 FCC Rcd at 15762, 15793-4, paras. 5, 65-66.

¹² *Id.* at 10789-90, para. 25.

¹³ *Id.* at 10787-88, para. 22.

¹⁴ *Id.* at 10788-90, paras. 24-25.

¹⁵ *Id.* at 10789-90, para. 25; 47 C.F.R. §§ 64.1903(a), 64.1903(b).

¹⁶ *Second Reconsideration Order*, 14 FCC Rcd at 10790-01, para. 26; 47 C.F.R. § 32.27.

¹⁷ *See Second Reconsideration Order*, 14 FCC Rcd at 10790-91, para. 26. The Commission also specifically rejected a proposal for removing the separate affiliate requirement for all rural telephone companies or for all incumbent LECs with fewer than 2 percent of the nation's subscriber lines. *Id.* at para. 17 & n.40. *See also* 47 U.S.C. § 251(c).

6. Concurrent with the release of the *Second Reconsideration Order*, the Commission affirmed these determinations in the *ITTA Preemption Order*.¹⁸ In particular, the Commission reiterated that, except for incumbent independent LECs providing in-region, interexchange service solely through resale, application of the separate affiliate requirement continued to be a valuable and necessary safeguard against anti-competitive conduct.¹⁹

7. More recently, as part of the 2000 Biennial Review, the Commission reexamined the separate affiliate requirement for the provision of in-region, interexchange service by independent LECs.²⁰ Specifically, the Commission concluded that it should institute proceedings to consider exempting rural telephone companies, as defined in section 3(37) of the Act, from the separate affiliate requirement.²¹ Commenters participating in the 2000 Biennial Review generally supported this recommendation.²²

III. DISCUSSION

8. In this proceeding, we invite interested parties to comment on whether application of the separate affiliate requirement for incumbent independent LECs serves the public interest. In particular, we ask for comment on whether or not the benefits of this separate affiliate requirement outweigh the regulatory and economic costs involved. We also seek comment on possible alternative safeguards, including proposals for applying the separate affiliate requirement to a more limited category of incumbent independent LECs. We note that the scope of this NPRM is broader than that contemplated by the Commission in its Report in the 2000 Biennial Review and, as described below, involves the application of our separate affiliate requirement to all incumbent independent LECs. We expect that this approach will produce a more developed record and give the Commission greater flexibility in addressing these issues.

9. General Information. In order to better assess the practical impact of our current rules, we need to further develop the factual record concerning the provision of in-region, interexchange service by incumbent independent LECs. Accordingly, we begin by asking a series of threshold questions intended to elicit data that will allow us to conduct a thorough examination of the costs and benefits of our current rules. How many incumbent independent LECs provide in-region, interexchange service? Of these, how many provide such service exclusively through

¹⁸ *Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, AAD File No. 98-43, Third Memorandum Opinion and Order, 14 FCC Rcd 10840 (1999) (*ITTA Preemption Order*).

¹⁹ *ITTA Preemption Order*, 14 FCC Rcd at 10847, para. 11.

²⁰ *Biennial Regulatory Review 2000*, CC Docket No. 00-175, Commission Report, FCC 00-456, at para. 63 (rel. Jan. 17, 2001) (*Commission Report*).

²¹ *See id.* But see also *Biennial Regulatory Review 2000*, CC Docket No. 00-175, Updated Staff Report, at 130 (rel. Jan. 17, 2001) (*Updated Staff Report*).

²² *See* ITTA Comments at 7-11, USTA Comments at 29, ITTA Reply Comments at 6, Sprint Comments at 4. But see WorldCom Comments at 4-5 (arguing that the separate affiliate requirement was necessary to prevent incumbent independent LECs from leveraging their local exchange market power into the long distance market).

resale using a separate corporate division, and how many provide such service, in whole or in part, on a facilities basis through a separate affiliate? How large are these incumbent independent LECs? What is the size of their in-region interexchange operations and what is their market share? To what extent are the local exchange areas of incumbent independent LECs geographically disparate or geographically contiguous? To what extent is there local competition in these areas? In addition, to what extent do incumbent independent LECs provide interexchange service to customers located outside of their local exchange areas?

10. More specifically, how many incumbent independent LECs providing in-region, interexchange service are rural telephone companies, as defined in section 3(37) of the Act? What percentage of these companies provide such service through the ownership of facilities or the resale of other carriers' interexchange services? Similarly, how many incumbent independent LECs providing in-region, interexchange service have fewer than 2 percent of the nation's subscriber lines and may be eligible for treatment under section 251(f)(2) of the Act?²³ Again, what percentage of these carriers provide such service through the ownership of facilities or the resale of other carriers' interexchange services? Finally, are there incumbent independent LECs providing in-region, interexchange service that have more than 2 percent of the nation's subscriber lines? What percentage of these carriers provide in-region, interexchange service through the ownership of facilities or resale?

11. If the Commission's rules did not require the use of a separate corporate affiliate, would incumbent independent LECs now providing in-region, interexchange service exclusively through resale modify their operations to provide such service at least in part on a facilities basis? Although the Commission previously found that this requirement did not appear to be a disincentive for investment, we invite comment on whether or not this requirement may act as a disincentive to invest in newer advanced services, such as packet-based technologies. We also invite comment on the proportion of customers taking in-region, interexchange service from incumbent independent LECs or their affiliates. How many other interexchange carriers serve areas where incumbent independent LECs provide in-region, interexchange service? To what extent is there a history of regulatory and/or business disputes between incumbent independent LECs providing in-region, interexchange service and other interexchange service providers operating in these service areas?

12. Statutory Significance of Section 272 Separate Affiliates. The Commission has previously found that, consistent with section 601(c) of the Act, the imposition by Congress of section 272 separate affiliate requirements on BOC provision of in-region, interexchange service does not foreclose the Commission from imposing separate affiliate requirements upon incumbent independent LECs under its broad rulemaking authority.²⁴ Nonetheless, we seek comment here on whether and to what extent the distinction made in section 272 between BOCs and other incumbent independent LECs should guide us in exercising our discretionary authority to impose separation requirements upon incumbent independent LEC provision of in-region, interexchange

²³ 47 U.S.C. § 251(f)(2).

²⁴ See, e.g., *Second Reconsideration Order*, 14 FCC Rcd at 10782-83, para. 15; 47 U.S.C. §§ 154(i), 201.

services. Cognizant that Congress itself has recognized that different classes of LECs may require different levels of safeguards and incentives, by mandating the section 272 safeguards only for BOCs, how should that fact guide our examination of the continued need for the separate affiliate rules under consideration in this proceeding?

13. Costs and Benefits of Separate Affiliate Requirement. We invite interested parties to comment on the specific costs and benefits associated with the separate affiliate requirement in terms of protecting interexchange competition and consumer choice. Among other things, we ask interested parties to address whether the separate affiliate requirement has proved effective over time, what kinds of harms may result if we relax the safeguards, whether alternative safeguards might achieve the same public interest benefits, and whether circumstances have changed such that the Commission's separate affiliate requirement is either more or less necessary.

14. We note that the Commission has described its separate affiliate requirement as an effort to reduce the ability and incentive of incumbent independent LECs to engage in cost misallocation, unlawful discrimination, or a price squeeze against rival interexchange carriers.²⁵ We invite comments that describe specific instances of these harms, including complaints that have been filed with either this Commission or state commissions. We also invite comment on how effective the Commission's separate affiliate requirement has been at preventing these harms. We also ask interested parties to address the cost of creating and administering a separate affiliate with its own books of account. Commenters should address the efficiency loss and other possible business costs of the prohibition on joint ownership facilities. For example, does this substantially inhibit incumbent independent LECs from making efficient use of their equipment? We also invite interested parties to identify any other administrative, regulatory or economic costs associated with use of a separate affiliate for the provision of in-region, interexchange service. In responding to these questions, we request that commenters provide specific, detailed information rather than speculative statements about regulatory costs and/or the potential for anti-competitive behavior.

15. In addition, we ask for comment on alternative safeguards that could achieve relevant public interest benefits while imposing fewer economic and administrative costs. For example, should all incumbent independent LECs be allowed to provide in-region, interexchange service, in whole or in part on a facilities basis, using a separate corporate division rather than a separate corporate affiliate? What other safeguards should apply to prevent anti-competitive conduct by the incumbent independent LEC?

16. Would changing the current separate affiliate requirement to a separate division requirement as the Commission did in the resale context, affect either the ability or incentive of an incumbent independent LEC to engage in cost misallocation, unlawful discrimination, or a price squeeze? What costs would an incumbent independent LEC avoid if such a change were made? Would such a change significantly affect the ability of the Commission, interexchange competitors, or third parties, to detect improper cost-shifting, discrimination, or price squeezes?

17. Should use of a separate corporate division be limited to certain categories of

²⁵ See, e.g., *Second Reconsideration Order*, 14 FCC Rcd at 10772, 10784-85, paras. 2, 17.

incumbent independent LECs providing in-region, interexchange service on a facilities basis? If so, what factors would justify different treatment of different categories of incumbent independent LECs? Should we draw distinctions based on the number of access lines served, the revenues of the interexchange operation, the rural nature of the local exchange service area involved, or the extent of jointly-owned facilities? Should the Commission accord special treatment to those carriers identified by Congress in section 251(f)(2) in the Act as presumptively exempt from section 251(c)'s interconnection, unbundling, and resale requirements? Should the Commission accord special treatment to rural telephone companies, as defined in section 3(37)?

18. We also ask interested parties to comment on whether the Commission should focus on the actual extent of interexchange competition in determining whether a separate affiliate is necessary. For example, incumbent independent LECs could be allowed to use a separate corporate division subject to current safeguards if a specified number of competitive interexchange carriers served residential and business customers in the local service area at issue. We welcome any additional proposals for alternative safeguards.²⁶

19. We also invite comment on whether there have been regulatory changes in the last several years that would significantly affect the ability and incentive of incumbent independent LECs to engage in discriminatory conduct. For example, have changes in the Commission's access charge or other rules affected the ability and incentive of the incumbent independent LECs to discriminate against their interexchange competitors? Would adoption of certain proposals under consideration in the Multi-Association Group (MAG) Plan proceeding affect the ability or incentive of incumbent independent LECs to engage in anti-competitive behavior if implemented?²⁷

20. Parties should address any other factors that would warrant a change in the Commission's analysis of the ability and incentive of incumbent independent LECs to engage in anti-competitive behavior affecting their interexchange competitors. For example, is an incumbent independent LEC's ability and incentive to engage in cost misallocation affected by participation in the average schedule compensation mechanism, which bases interstate compensation on factors other than cost allocations?²⁸ Even if participation in the average schedule compensation mechanism eliminates the incentive and ability to misallocate interstate costs, would an average schedule company still have the incentive and ability to misallocate intrastate costs? We invite comment on whether incumbent independent LEC participation in the National Exchange Carrier Association (NECA) access charge pools would affect their incentive

²⁶ See, e.g., 47 C.F.R. § 20.20(f) (providing a sunset date for the separate affiliate requirement for incumbent LECs providing in-region commercial mobile radio service (CMRS)).

²⁷ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, 16 FCC Rcd 460 (2001) (setting forth an interstate access reform and universal service support proposal for incumbent LECs subject to rate-of-return regulation, which is designed to be implemented over a five-year period).

²⁸ See 47 C.F.R. § 69.606.

and ability to engage in anti-competitive behavior.²⁹ We also request comment on whether or not the rate integration and rate averaging requirements in section 254(g) of the Act affect the ability and incentive of incumbent independent LECs to engage in anti-competitive behavior affecting their interexchange competitors.³⁰

21. In addition, we seek comment on whether, in the absence of prophylactic competitive safeguards, the ability and incentive of incumbent independent LECs to engage in anti-competitive behavior would result in significant public interest harms. What would be the effect of any change in these safeguards on consumers and on the cost of interexchange services? More specifically, we seek comment on whether an incumbent independent LEC providing in-region, interexchange service to customers in its service area could successfully raise and maintain its prices above competitive levels.³¹ Even if an incumbent independent LEC were not capable of doing so, could it nevertheless raise the cost of one or more of its interexchange rivals with the result that one or more would decide to exit the market? If they could, does this reduction in consumer choice raise concerns that the Commission should seek to prevent with prophylactic regulation? With respect to these potential harms, are there specific factors, such as the provision of interexchange service to customers outside its region, that would affect an incumbent independent LEC's ability or incentive to engage in anti-competitive conduct?

22. Does the fact that an incumbent independent LEC serves only a relatively small number of customers in a small geographic area mitigate its ability and incentive to discriminate against competing interexchange carriers, as compared to larger carriers serving larger areas, such as the BOCs? Similarly, is an incumbent independent LEC's incentive and ability to discriminate lessened if its local exchanges are located in disparate areas as opposed to contiguous areas? We note that in other contexts, the Commission has recognized that an increase in the number of local areas controlled by a single carrier increases the ability and incentive to discriminate against interexchange carriers seeking to provide retail services within the larger or expanded region.³² We ask parties to comment on the relevance of this concept, if any, to incumbent independent LEC provision of in-region, interexchange service.

23. Finally, in seeking comment, we recognize that the Commission has addressed these matters described in the past. In light of this, we urge interested parties to support general claims concerning both the benefits and costs of the separate affiliate requirement with specific, detailed, current information whenever possible. We also ask interested parties to identify with particularity changed market or regulatory circumstances that they believe may warrant adoption

²⁹ See generally 47 C.F.R. § 69.601 *et seq.*

³⁰ 47 U.S.C. § 254(g).

³¹ *LEC Classification Order*, 12 FCC Rcd at 15793-94, paras. 65-66.

³² See, e.g., *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14795-99, paras. 186-96.

of a different approach. In addition, we invite interested parties to identify factors or considerations that they believe the Commission may have overlooked or accorded inadequate weight in its prior consideration of these issues.

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

24. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.³⁴ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.

B. Initial Regulatory Flexibility Analysis

25. Section V sets forth the Commission’s Initial Regulatory Flexibility Analysis (IRFA) regarding policies and rules proposed in this NPRM.

C. Comment Filing Procedures

26. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,³⁵ interested parties may file comments within 30 days after publication of this NPRM in the Federal Register and may file reply comments within 21 days after the date for filing comments. All filings should refer to CC Docket No. 00-175. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.³⁶ Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is CC Docket No. 00-175. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: “get form<your e-mail address.” A sample form and directions will be sent in reply.

27. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Janice Myles, Policy & Program Planning Division,

³³ 47 C.F.R. §§ 1.1200 *et seq.*

³⁴ *See* 47 C.F.R. § 1.1206(b)(2).

³⁵ 47 C.F.R. §§ 1.415, 1.419.

³⁶ *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Common Carrier Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in “read only” mode. The diskette should be clearly labeled with the commenter’s name, proceeding (including the docket number, in this case, CC Docket No. 00-175), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: “Disk Copy—Not and Original.” Each diskette should contain only one party’s pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission’s copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554.

28. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission’s copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com.

29. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission’s rules.³⁷ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in the NPRM in order to facilitate our internal review process.

V. INITIAL REGULATORY FLEXIBILITY ANALYSIS

30. As required by the Regulatory Flexibility Act (RFA), as amended,³⁸ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

31. In this NPRM, the Commission seeks comment on whether or not the benefits of its separate affiliate requirement for in-region interexchange service provided by incumbent

³⁷ See 47 C.F.R. § 1.48.

³⁸ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

independent LECs continues to outweigh the costs and whether or not there are alternative safeguards that are as effective but impose fewer regulatory costs.³⁹

B. Legal Basis

32. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 201-202, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 201-202, 303, and 403, and sections 1.1, 1.411, and 1.412 of the Commission's rules, 47 C.F.R. § 1.1, 1.411, and 1.412.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

33. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by any rules.⁴⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴¹ For the purposes of this order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. s 632, unless the Commission has developed one or more definitions that are appropriate to its activities.⁴² Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁴³ Consistent with the SBA's Office of Advocacy's view, we have included small incumbent LECs in this RFA analysis. We emphasize, however, that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

34. *Local Exchange Carriers.* The most reliable source of information regarding the number of LECs nationwide appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).⁴⁴ According to our most recent data, there are 1,335 incumbent LECs.⁴⁵ Although some of these carriers may not be independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's

³⁹ 47 U.S.C. §§ 64.1901-03.

⁴⁰ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

⁴¹ 5 U.S.C. § 601(6).

⁴² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

⁴³ 15 U.S.C. § 632.

⁴⁴ 47 C.F.R. § 64.601 *et seq.*; *Carrier Locator: Interstate Service Providers*, FCC Common Carrier Bureau, Industry Analysis Division (rel. Oct. 2000) (*Carrier Locator*).

⁴⁵ *Carrier Locator* at Table 1. The total for competitive LECs includes competitive access providers and competitive LECs.

definition. Consequently, we estimate that there are no more than 1,335 small entity incumbent LECs that may be affected by the proposals in the NPRM.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

35. We expect that any proposal we may adopt pursuant this NPRM will decrease existing reporting, recordkeeping or other compliance requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴⁶

37. The overall objective of this proceeding is to reduce existing regulatory burdens on impacted carriers to the extent consistent with the public interest.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

38. None.

VI. ORDERING PARAGRAPHS

39. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 2, 4(i)-4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i)-4(j), 201, 303(r), this NPRM IS ADOPTED.

⁴⁶ 5 U.S.C. § 603(c).

40. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary